THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 20950 of 1996

Dated: 02.03.2007

Between:

K. Venkateswara Rao

... Petitioner

AND

The Divisional Manager, APSRTC,
Srikakulam, Srikakulam District
& another.

... Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 20950 of 1996

ORDER:-

This writ petition is filed to declare the action of the respondents in not absorbing the petitioner into respondents' Corporation as illegal, arbitrary and for a consequential direction in the nature of writ of Mandamus to the respondents to absorb the petitioner into service as cleaner.

Prior to the nationalization of the route Danta to Bhavanapadu, a bus bearing registration No.APS 1806 was operated under a valid permit. Consequent to the nationalization, the said bus was displaced. On 14.09.1989, the petitioner claiming to be the cleaner of the displaced bus attended interview before a selection committee constituted by APSRTC. Since the respondents have not communicated their decision for a long time, the petitioner filed W.P.No.4489 of 1995 in this Court. This Court by its order dated 28.06.1995, while finding fault with the respondents in not taking a decision in spite of long lapse of time, disposed of the said writ petition with a direction to the 1st respondent herein to consider and take a decision on the petitioner's application for absorption of his service as cleaner

within a period of six weeks from the date of receipt of a copy of the order. In pursuance of the said order, the petitioner was again called for interview on 11.09.1995. Thereafter, Chairman of the Selection Committee and Senior Manager (Operations) issued a show cause notice to the petitioner in HC/P3/402(1/95)-RM/SKLM dated 27.10.1995 wherein the petitioner was asked to show cause as to why his claim for absorption as displaced cleaner shall not be rejected. It is mentioned therein that the selection committee has met on 11.09.1995, interviewed the petitioner and observed that the petitioner was not having the knowledge of the vehicle and route course. It was also mentioned therein that the selection committee observed that the required number of cleaners were already absorbed as per the norms fixed for displaced cleaners and therefore the committee has come to the provisional conclusion to reject the petitioner's claim for absorption as displaced cleaner. In response to the said show cause notice, the petitioner submitted his explanation. In the explanation, the petitioner specifically mentioned that in the interview held on 11.09.1995, he was never asked any question and was merely asked to give in writing who were the other employees who worked with him. It was also mentioned in the explanation that beyond the said question, not even a single question was asked. It was further alleged in the explanation that the Chairman expressed his unhappiness for the petitioner moving the A.P. High Court against APSRTC. The petitioner specifically refuted the allegation contained in the show cause notice that he had no knowledge of the vehicle and route course. The petitioner further stated that

since the post which he was claiming is only of the cleaner and that he has got enough knowledge for being a cleaner of the vehicle as he worked in that capacity for more than two years. In spite of receiving this explanation, the respondents have not passed any order in writing and Ms. B.G. Uma Devi, learned standing counsel for APSRTC fairly stated during the course of hearing that no order in writing was passed by the respondents after receiving the explanation.

Smt. J Srilatha, Law Officer of APSRTC filed a counter-affidavit in which it was mentioned that earlier on 14.09.1989 the Selection Committee interviewed the petitioner along with others and observed that the petitioner was not having the knowledge of the service vehicle bearing No.APS 1806, the route course and other relevant particulars, though he produced service certificate issued by the Labour Officer. It is further submitted that in pursuance of the order dated 28.06.1995 passed by this Court, the petitioner was called for interview on 11.09.1995 and that the Selection Committee noted the remarks on the proceedings stating that the owner of the bus gave five names of the persons having worked as cleaners on that bus and that the petitioner, who was interviewed in the year 1989, was declared as non-genuine candidate even on 11.09.1995 on the ground that he has no knowledge of vehicle and the route course etc. It is further averred that the Selection Committee has observed that as per the circular on the recruitment of displaced employees, the required number of cleaners were already selected and absorbed therefore the show cause notice dated 27.10.1995 was issued to the

petitioner as per the recommendations of the Selection Committee. It is further stated in para 6 of the affidavit that the selection committee came to the conclusion that the petitioner had no knowledge of the service vehicle, route course and other relevant particulars and that the petitioner was not a genuine employee of the above said vehicle and therefore he was not absorbed. It is submitted in para 8 of the counter-affidavit that the corporation in its resolution dated 15.05.1998 resolved to impose total ban on further absorption and appointment of displaced employees into the service of the corporation in view of the critical financial position and in view of the corporation's every possible effort to reduce bus staff ratio on par with other road transport corporations of India.

Heard Sri K.L.N.Swamy, learned counsel for the petitioner and Ms. B.G. Uma Devi learned counsel representing the respondents.

As has already been narrated hereinabove, in the show cause notice dated 27.10.1995 it was alleged that the selection committee has interviewed the petitioner and observed that the petitioner was not having the knowledge of the vehicle, route course and that the required number of cleaners were already absorbed as per the norms fixed for displaced cleaners. In the explanation submitted to the show cause notice, the petitioner emphatically stated that during the interview held on 11.09.1995 he was not asked any question whatsoever and that he was merely asked to give in writing who were the other employees that have worked with him. It is worth noticing that having issued the show

cause notice to the petitioner with specific allegations and having received the explanation, in which these specific allegations were unequivocally denied, neither the selection committee nor the respondents have passed any order.

Learned Standing Counsel submitted that in the matter relating to selections, the decisions of the selection committee or reasons therefor are not communicated to the unsuccessful candidates. Ordinarily, there is no obligation on the part of the employer to communicate its decisions or reasons for non-selection to the unsuccessful candidates. But, on the facts of this case, where the petitioner was interviewed for second time and was given a show cause notice by the respondents with specific allegations, which were replied to, I am of the view that having made allegations against the petitioner to the effect that he is not suitable for being considered, it is incumbent upon the respondents to meet the explanation offered by the petitioner in reply to the show cause notice and communicate the decision of the respondents. The silence on the part of the respondents having received the explanation without passing any order gives rise to a reasonable presumption that the stand taken by the petitioner in his show cause notice is acceptable and therefore there was nothing for the Chairman of the Selection Committee or the respondents to controvert the same. Therefore the main reason put forth in the show cause notice and reiterated in the counter-affidavit that the petitioner did not have the knowledge of the vehicle, route course, cannot be accepted and denial of employment on that ground is liable to be held as arbitrary and

illegal.

As regards the second reason that the required number of cleaners were already absorbed as per the norms fixed for the displaced cleaners, the learned Standing Counsel candidly submitted that as far as the post in question is concerned, no displaced cleaner was absorbed. She sought to justify this by saying that according to the calculation, no displaced employee of this particular post was entitled to be absorbed as the quota for cleaners calculated on the basis of the norms for this post fell below 0.5. This reason is not mentioned either in the show cause notice or in the counter-affidavit. It is well settled that a public authority passing a public order cannot seek to supplement its reasons by way of affidavits (see **Commissioner of Police, Bombay v. Gordhan Das Bhanji** [AIR 1952 SC 16) and **Mohinder Singh Gill v. Chief Election Commissioner** (AIR 1978 SC 851)].

Though the learned Standing Counsel was called upon to produce the record pertaining to the minutes dated 11.09.1995, the same has not been produced.

Having regard to the aforementioned facts and circumstances of the case, I am of the view that the petitioner's assertion as made in his explanation to the show cause notice that no question except the one relating to the co-workers of the petitioner was put to him and that the Chairman of the Selection Committee has expressed his anger at the petitioner for approaching this Court in the absence of any denial either by way

of an order passed or in the counter-affidavit filed in this writ petition, deserves acceptance. It is therefore declared that the action of the respondents in denying the petitioner the post of cleaner is arbitrary and based on extraneous considerations.

Ordinarily, this Court exercising its jurisdiction under Article 226 of the Constitution of India refrains from giving directions to appoint a person to any post. But, this is a hard case where the petitioner is struggling to secure a small employment since 14.09.1989. Despite passage of 18 long years, the petitioner's position remained as it was in the year 1989. This Court once already directed the respondents to consider his case on 28.06.1995. A similar direction to reconsider the petitioner's case at this length of time, I am afraid, is only likely to result in further frustration of the petitioner's quest for an employment to make his both ends meet. Therefore, treating this as an exceptional case, I am inclined to give a direction to the respondents to absorb the petitioner as cleaner.

In the result, the writ petition is allowed and the respondents are directed to absorb the petitioner as cleaner within a period of eight weeks from today.

It is, however, made clear that the order of appointment will take effect from the date on which it is issued and the petitioner is not entitled to any benefits for the period prior to his appointment as cleaner.

C.V. NAGARJUNA REDDY, J

Date: 02.03.2007
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